



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0154]

RIN 1625-AA00

Safety Zones; San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend several permanent safety zones located in the Captain of the Port San Francisco zone that are established to protect public safety during annual firework displays. These amendments will update listed events to accurately reflect the firework display locations. This proposed rulemaking would limit the movement of vessels within the established firework display areas unless authorized by the Captain of the Port (COTP) San Francisco or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-0154 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Junior Grade Christina Ramirez, U.S. Coast Guard Sector San Francisco; telephone 415-399-3585, email D11-PF-MarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

| | |
|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| COTP | Captain of the Port |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of proposed rulemaking |
| PATCOM | Patrol Commander |
| § | Section |
| U.S.C. | United States Code |

II. Background, Purpose, and Legal Basis

The Coast Guard is conducting this rulemaking under the authority of 33 U.S.C. 1231. Fireworks displays are held annually on a recurring basis on the navigable waters within the COTP San Francisco zone. Three of the annual fireworks events that require safety zones do not currently reflect the accurate location of the respective display sites. These safety zones are necessary to provide for the safety of the crew, spectators, participants of the event, participating vessels, and other users and vessels of the waterway from the hazards associated with firework displays. The effect of these proposed safety zones will be to restrict general navigation in the vicinity of the events, from the start of each event until the conclusion of that event. Except for the persons or vessels authorized by the COTP San Francisco or a designated representative, no person or vessel may enter or remain in the regulated area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks displays to ensure the safety of participants, spectators, and transiting vessels.

III. Discussion of Proposed Rule

The Coast Guard has reviewed 33 CFR 165.1191 for accuracy. The Coast Guard is proposing to amend Table 1 in § 1191 to update three events to reflect the current event locations. These events are listed numerically in Table 1 of this section: (7), (8), (22). The display locations currently listed have been deemed undesirable or hazardous by the event sponsors. The COTP San Francisco has determined that potential hazards associated with the current fireworks locations would be a safety concern for event crew, spectators, participants of the event, participating vessels, and other users and vessels of the waterway. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-

day of each safety zone. Vessel traffic would be able to safely transit around each safety zone which would impact a small designated area of the COTP San Francisco zone for less than 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Local Notice to Mariner and Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.]

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have

questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal

agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zones lasting less than 1 hour that would prohibit entry within 1,000 feet of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend to 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

In § 165.1191, in Table 1 to §165.1191, revise items 7, 8, and 22, to read as follows:

§ 165.1191 Northern California and Lake Tahoe Area Annual Fireworks Events.

TABLE 1 TO §165.1191

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|---|---|
| ***** | |
| 7. San Francisco Independence Day Fireworks | |
| Sponsor | The City of San Francisco. |
| Event Description | Fireworks Display. |
| Date | July 4th. |
| Location 1 | A barge located approximately 1000 feet off San Francisco Pier 39 at approximately 37°48'49" N, 122°24'46" W. |
| Location 2 | A barge located at the end of the San Francisco Municipal Pier at Aquatic Park at approximately 37°48'39" N, 122°25'37" W. |
| Regulated Area 1 | 1. 100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display. |
| Regulated Area 2 | 2. 100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display. |
| 8. Fourth of July Fireworks, Berkeley Marina | |
| Sponsor | Berkeley Marina. |
| Event Description | Fireworks Display. |

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|---------------------------------------|--|
| Date | July 4th. |
| Location | A barge located near Berkeley Pier at approximately 37° 51'40"N, 122° 19'19"W. |
| Regulated Area | 100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display. |
| ***** | |
| 22. Monte Foundation Fireworks | |
| Sponsor | Monte Foundation Fireworks. |
| Event Description | Fireworks Display. |
| Date | Second Saturday in October. |
| Location | Capitola Pier in Capitola, CA. |
| Regulated Area | 1,000-foot safety zone around the navigable waters of the Capitola Pier. |
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Dated: March 11, 2016

Gregory G. Stump

Captain, U.S. Coast Guard

Captain of the Port San Francisco

[FR Doc. 2016-09030 Filed: 4/18/2016 8:45 am; Publication Date: 4/19/2016]